



**NOTICE OF SPECIAL MEETING
CITY COUNCIL OF THE CITY OF NATIONAL CITY
COUNCIL CHAMBERS
CIVIC CENTER
1243 NATIONAL CITY BOULEVARD
NATIONAL CITY, CALIFORNIA
TUESDAY, JANUARY 16, 2018 – 5:00 P.M.**

NOTICE IS HEREBY GIVEN, that the City Council of the City of National City will hold a special meeting on Tuesday, January 16, 2018, at 5:00 p.m., or as soon thereafter as the matter may be considered, in the Council Chambers at the Civic Center, 1243 National City Boulevard, National City, California, 91950. The business to be transacted at said meeting will be for the City Council to consider the following:

CITY COUNCIL

OPEN SESSION

1. Negotiation of a Master License to locate "small cell" wireless facilities on City-owned utility poles. (Engineering/Public Works/City Attorney)

CLOSED SESSION

2. Conference with Legal Counsel – Pending Litigation
Existing Litigation under Paragraph (1) of Subdivision (d) of Government Code Section 54956.9
Ali Alejandro Mendoza v. City of National City, et al.
USDC Case No. 15-cv-1528-JAH (BGS)

Dated: January 9, 2018.



RON MORRISON, Mayor



AGENDA OF A SPECIAL MEETING
NATIONAL CITY CITY COUNCIL
OF
THE CITY OF NATIONAL CITY
COUNCIL CHAMBERS
CIVIC CENTER
1243 NATIONAL CITY BOULEVARD
NATIONAL CITY, CALIFORNIA

TUESDAY, JANUARY 16, 2018 – 5:00 PM

RON MORRISON
Mayor

ALBERT MENDIVIL
Vice Mayor

JERRY CANO
Councilmember

MONA RIOS
Councilmember

ALEJANDRA SOTELO-SOLIS
Councilmember

1243 National City Blvd.
National City
619-336-4240

Meeting agendas and
minutes available on web

WWW.NATIONALCITYCA.GOV

ORDER OF BUSINESS: Public sessions of all Regular Meetings of the City Council / Community Development Commission - Housing Authority (hereafter referred to as Elected Body) begin at 6:00 p.m. on the first and third Tuesday of each month. Public Hearings begin at 6:00 p.m. unless otherwise noted. Closed Sessions begin at 5:00 p.m. or such other time as noted. If a workshop is scheduled, the subject and time of the workshop will appear on the agenda. The Mayor and Council members also sit as the Chairperson and Members of the Board of the Community Development Commission (CDC).

REPORTS: All open session agenda items and reports as well as all documents and writings distributed to the Elected Body less than 72 hours prior to the meeting, are available for review at the entry to the Council Chambers. Regular Meetings of the Elected Body are webcast and archived on the City's website www.nationalcityca.gov.

PUBLIC COMMENTS: Prior to the Business portion of the agenda, the Elected Body will receive public comments regarding any matters within the jurisdiction of the City and/or the Community Development Commission. Members of the public may also address any item on the agenda at the time the item is considered by the Elected Body. Persons who wish to address the Elected Body are requested to fill out a "Request to Speak" form available at the entrance to the City Council Chambers, and turn in the completed form to the City Clerk. The Mayor or Chairperson will separately call for testimony of those persons who have turned in a "Request to Speak" form. If you wish to speak, please step to the podium at the appropriate time and state your name and address (optional) for the record. The time limit established for public testimony is three minutes per speaker unless a different time limit is announced. Speakers are encouraged to be brief. The Mayor or Chairperson may limit the length of comments due to the number of persons wishing to speak or if comments become repetitious or irrelevant.

WRITTEN AGENDA: With limited exceptions, the Elected Body may take action only upon items appearing on the written agenda. Items not appearing on the agenda must be brought back on a subsequent agenda unless they are of a demonstrated emergency or urgent nature, and the need to take action on such items arose after the agenda was posted.

CONSENT CALENDAR: Consent calendar items involve matters which are of a routine or noncontroversial nature. All consent items are adopted by approval of a single motion by the City Council. Prior to such approval, any item may be removed from the consent portion of

the agenda and separately considered, upon request of a Councilmember, a staff member, or a member of the public.

Upon request, this agenda can be made available in appropriate alternative formats to persons with a disability in compliance with the Americans with Disabilities Act. Please contact the City Clerk's Office at (619) 336-4228 to request a disability-related modification or accommodation. Notification 24-hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

Spanish audio interpretation is provided during Elected Body Meetings. Audio headphones are available in the lobby at the beginning of the meeting.

Audio interpretación en español se proporciona durante sesiones del Consejo Municipal. Los audífonos están disponibles en el pasillo al principio de la junta.

COUNCIL REQUESTS THAT ALL CELL PHONES AND PAGERS BE TURNED OFF DURING CITY COUNCIL MEETINGS.

OPEN TO THE PUBLIC

OPEN SESSION

CALL TO ORDER

ROLL CALL

PUBLIC COMMENTS (THREE-MINUTE TIME LIMIT)

OPEN SESSION

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ADJOURNMENT

Next Regular City Council Meeting: Tuesday, January 16, 2018, 6:00 p.m., City Council Chambers, Civic Center – National City, California.

**CITY OF NATIONAL CITY, CALIFORNIA
COUNCIL AGENDA STATEMENT**

MEETING DATE: January 16, 2018

AGENDA ITEM NO.

ITEM TITLE:

Negotiation of a Master License to locate "small cell" wireless facilities on City-owned utility poles

PREPARED BY: Roberto M. Contreras, Deputy City Attorney
Stephen Manganiello, City Engineer

DEPARTMENT: Engineering/Public Works &
City Attorney's Office

PHONE: (619) 336-4220 / (619) 336-4382

APPROVED BY: 

EXPLANATION:

See attached staff report.

FINANCIAL STATEMENT:

ACCOUNT NO.

Each wireless provider that signs the City's Master License would pay the City a negotiated price for each "small cell" wireless facility located on a City-owned utility pole.

APPROVED: _____ **Finance**

APPROVED: _____ **MIS**

ENVIRONMENTAL REVIEW:

N/A

ORDINANCE: **INTRODUCTION:** ☐ **FINAL ADOPTION:** ☐

STAFF RECOMMENDATION:

Direct the City Manager, or designee, to negotiate with wireless providers the terms of a Master License to locate "small cell" wireless facilities on City-owned utility poles.

BOARD / COMMISSION RECOMMENDATION:

N/A

ATTACHMENTS:

Staff Report

City of National City Staff Report

1. Introduction

Section 18.30.220 ("Telecommunications facilities") of the City of National City's (the "City") Municipal Code regulates the placement and use of wireless telecommunications facilities and antenna installation within the City. Several wireless providers have expressed interest in locating "small cell" wireless facilities on City-owned utility poles. In order to preserve the City's maximum regulatory authority, the City Manager seeks authorization and direction to negotiate with wireless providers the terms of a Master License to locate "small cell" wireless facilities on City-owned utility poles.

Changes in federal and state law have significantly affected the City's authority to regulate such wireless facilities. These changes include stricter timeframes and limitations on application reviews, new regulatory classifications for collocations and modifications to existing facilities and even automatic approvals under certain circumstances.

More preemptive changes are on the horizon. Rulemaking proceedings at the Federal Communications Commission ("FCC") have proposed to revisit essentially all the existing federal rules with an eye to streamline and accelerate wireless deployments. Closer to home, SB 649 (Hueso) was recently vetoed by Governor Brown. Had it been enacted, Cities would have been required to process specified "small cells" through a ministerial process and to make space on municipal property available to site operators on regulated rates, terms and conditions.

2. Legal and Regulatory Background

2.1. The Communications Act

In 1996, Congress adopted the Telecommunications Act to, among many other things, preserve state and local land-use authority and at the same time encourage and facilitate personal wireless service facilities deployments. Local governments retain all their traditional authority except that local regulations cannot (1) prohibit or effectively prohibit personal wireless services; (2) unreasonably discriminate among functionally equivalent services; or (3) regulate based on environmental impacts from radiofrequency ("RF") emissions. In addition, local decisions must be made within a reasonable time and any denial requires a written decision based on substantial evidence in the written record.

2.2. California State Law

State law further limits local authority over all wireless facilities regardless of the proposed location and grants special rights to applicants that propose facilities in the public rights-of-way. For example, certain telephone corporations that are registered with the CPUC are granted a limited right to use the public rights-of-way to the extent necessary to provide services to the public in a manner that does not "incommode" the public use of

the rights-of-way.¹ This right to use the public rights-of-way is subject to local governments' reasonable time, place and manner regulations.² Both federal and state courts hold that California preserves local authority to regulate against both physical obstructions and aesthetic impacts.³ More recently, however, the California Court of Appeals construed "reasonable time, place and manner" regulations to apply (1) more narrowly to construction and maintenance activities and (2) equally to all utilities that access the rights-of-way regardless of purpose.⁴

2.3. National City Municipal Code

In 2012, the City Council adopted NCMC Section 18.30.220, which requires a conditional use permit for all commercial telecommunication facilities. Section 18.30.220 includes application procedures and requirements, design standards, and other requirements for applicants to follow.

3. Federal Regulatory Changes on the Horizon

The City faces several sea-changes in federal wireless deployment regulations that would likely impact the City's ability to control the location or design of wireless facilities, and require the City to process applications faster than reasonably achievable under the City's conditional use permit process. On April 20, 2017, the FCC took two significant steps to further preempt state and local authority over wireless and wireline telecommunication facilities. First, the FCC adopted a Notice of Proposed Rulemaking ("NPRM") and Notice of Inquiry ("NOI") into wireless siting policies (the "Wireless NPRM/NOI"). In addition, the FCC adopted an NPRM and NOI into wireline policies (the "Wireline NPRM/NOI"). These separate but interconnected documents collectively represent a top-down reevaluation of all the FCC's rules and regulations for wireless and wireline facilities.

4. Conclusion and Recommendation

Staff believes that negotiation of a Master License to locate "small cell" wireless facilities on City-owned utility poles would preserve the City's discretionary authority to the maximum extent permitted by law and allow the City to respond more quickly to future state or federal preemption. Accordingly, staff recommends that the City Council authorize and direct the City Manager, or designee, to negotiate such Master License with wireless providers.

¹ See CAL. PUB. UTILS. CODE § 7901.

² See CAL. PUB. UTILS. CODE § 7901.1.

³ See *Sprint PCS Assets LLC v. City of Palos Verdes*, 583 F.3d 716, 725 (9th Cir. 2009) (holding that localities may regulate wireless facility aesthetics in the public rights-of-way); *T-Mobile West LLC v. City and County of San Francisco*, Case No. A144252, slip op. at 22, 25 (Cal. Ct. App. 2016) (following *City of Palos Verdes* and rejecting facial challenge to an ordinance that required a discretionary review for wireless sites in the public rights-of-way).

⁴ See *T-Mobile v. City and County of San Francisco*, Case No. A144252, slip op. at 24-25 (Cal. Ct. App. 2016).